

Expert Report: Development, Marketing, and Use in Self-Defense of Large Capacity Magazines

**Prepared for the Washington State Attorney General's Office by**

Ryan Busse

**In the Matter of:**

GABRIELLA SULLIVAN, *et al.*,

Plaintiffs,

v.

BOB FERGUSON, *et al.*,

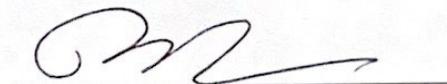
Defendants,

and

ALLIANCE FOR GUN RESPONSIBILITY,

Intervenor-Defendant.

Date: 1/25/2023

  
\_\_\_\_\_  
Ryan Busse

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	BACKGROUND AND QUALIFICATIONS .....	1
III.	SUMMARY OF OPINIONS .....	2
IV.	OPINIONS .....	2
	A.    Detachable Magazines, Large Capacity Magazines, Large Capacity Ammunition Feeding Devices.....	5
	B.    Magazines Are Accessories .....	6
	C.    History and Marketing of Tactical firearms, Assault Weapons, and Their Accompanying Large Capacity Magazines.....	11
	D.    Self-Defense and Magazine Capacity .....	35
V.	CONCLUSION.....	44

## **I. INTRODUCTION**

I have been asked by the Washington State Attorney General's Office to render an opinion on large capacity magazines, including whether they are necessary for a firearm to function, their use in self-defense, and how they became popular in today's culture.

## **II. BACKGROUND AND QUALIFICATIONS**

I was raised with firearms as an integral part of my life. I began shooting with various guns as a young boy and continued to regularly use and study guns throughout my life (I am now 52). After graduating college, I entered the firearms industry in 1992. I became a sales executive in the firearms industry in 1995, and I spent more than 25 years in this role. While in the industry, I developed innovative sales teams, maintained relationships with the largest national retailers, and was responsible for worldwide sales of millions of firearms. I built a dealer-direct sales network that included more than 2500 firearms dealers including locations in all 50 states, and I regularly visited these dealers. In my job, I also studied and built sales programs that relied on understanding the technical nature of most firearms available in the U.S. market, including AR platform guns and other types of rifles.

During my career, I played an integral role in building one of the largest firearms companies in the United States, Kimber, and I was nominated by shooting industry leadership many times for the SHOT Business, "Shooting Industry Person of the Year" Award. I served in an executive sales capacity as Vice President of Sales until August 2020. While in the industry I served as an advisor to the United States Senate Sportsmen's Caucus, and as the North American board chairman for Backcountry Hunters & Anglers, a national wildlife conservation and hunting organization.

I left the firearms industry because I was concerned about what I believed to be irresponsible and dangerous marketing and sales practices. Since I left, I have served as an advisor to the 2020 Biden presidential campaign, I have testified twice before the U.S. Congress about the firearms industry and gun policy (before the House Committee on Oversight and Reform and the Joint Economic Committee, respectively), I have been called to testify in closed-door briefings at

the U.S. Senate, and I currently serve as a Senior Advisor to Giffords. I remain a proud and active gun owner, outdoorsman, and advocate for responsible gun ownership.

I have provided expert witness testimony in *Miller v. Bonta*, No. 3:19-cv-01536-BEN-JLB (S.D. Cal.), and *Duncan v. Bonta*, No. 3:17-cv-1017-BEN-JLB (S.D. Cal.); *Oregon Firearms Federation Inc. v. State of Oregon*, (Case No. 2:22-cv-01815-IM); and *National Association for Gun Rights v. City of Highland Park, Illinois*, Case No. 1:22-cv-04774 (N.D. Ill.). A copy of my curriculum vitae is attached to this report as **Exhibit A**. I am being compensated at a rate of \$150 per hour for any research and preparation of written materials and \$300 per hour for any testimony.

### III. SUMMARY OF OPINIONS

In the following pages I will explain the reality of important technical issues in this case. I also provide critical historical timelines which explain the ways in which large capacity magazines (LCMs) have been developed and marketed by the firearms industry. I also provide my opinion on self-defense as it relates to LCMs.

Importantly, throughout this document, there are many instances where I offer the published opinions of the firearms industry in addition to my own opinions. Hence, there are many footnoted references and images to follow, and all are from trusted and verified firearms industry authorities.

### IV. OPINIONS

I have reviewed the Washington law which regulates the sale of large capacity magazines, and I am familiar with the function and marketing history of these magazines. With regards to the opinions I offer below pertaining to large capacity magazines, I also pay attention to AR-15 platform firearms because firearms based on this particular platform are now by far the most prevalent assault weapons in the United States and the history of large capacity magazines is closely intertwined with these guns and the companies that sell them.

In the pages that follow I will often focus on the nexus of LCMs and assault weapons. It is important to note that the now-prevalent commercial marketing of LCMs with these assault weapons belies the true intended “tactical” use of LCMs. When applied to firearms, the word

“tactical” means “planned offensive military action.” As will be discussed in the following pages, LCMs have come to play an increasingly prevalent role in the development and marketing of these firearms. This is true because these tactical firearms combined with LCMs are designed for offensive operations where maximizing the efficiency and speed of killing is a desired attribute.

Semiautomatic rifles, including AR and AK-platform rifles, as well as semiautomatic pistols and shotguns, are capable of firing one shot per each pull of the trigger. Each firearm is chambered for specific ammunition cartridges. Centerfire firearms are chambered for specific centerfire cartridges, which have the primer (the component that ignites the propellant) located in the center of the base of the cartridge case (as opposed to the rim of the cartridge). Today’s modern rimfire ammunition is almost always confined to small and less powerful cartridges, such as the .22LR. Bullets fired from these cartridges are small and light and move slower than almost all centerfire rifle ammunition. Rimfire chamberings are common in youth and “beginner” hunting rifles because they are relatively quiet and inexpensive and have low recoil. Conversely, modern centerfire ammunition requires a detonation of a primer in the center of the cartridge (CENTERfire) and these cartridges are generally much more powerful than rimfire cartridges. As an example, the .223, which is the most common AR-15 cartridge, fires bullets at more than 3000 feet/second, whereas a rimfire cartridge typically propels bullets at around 1100 feet/second. This increased centerfire velocity greatly increases the range and lethality of centerfire cartridges. Most handgun cartridges are also now centerfire, and these cartridges generally fire bullets much larger than rimfire cartridges, usually at velocities of between 800 and 1500 feet/second. Generally, centerfire weapons fire higher-caliber ammunition and/or fire it at higher velocities.

The AR-platform, in particular, is the civilian version of the military’s select-fire M-16 and M-4 rifles, which are capable of fully automatic or burst firing. Based on my familiarity with the firearms industry, AR-platform rifles and similar semiautomatic rifles did not begin to sell in significant numbers until the late 2000s and, particularly, not until after the 2012 shooting at Sandy Hook Elementary in Newtown, Connecticut.

During the mid-2000s, and especially after Sandy Hook, the firearms industry shifted towards marketing efforts specifically focused on developing the “tactical market.” In the industry, the term “tactical” generally refers to weapons and accessories that are meant for offensive military or law enforcement operations. This market now generally includes AR-15s, battle pistols and other handguns from various manufacturers and accessories such as bullet-proof vests and a wide variety of large capacity magazines.

Here are two images which illustrate the dramatic transition in the gun industry from the time when tactical guns were not accepted or normalized to the current when they are a central business focus. The first is an image of the 2004 Smith and Wesson annual product catalog cover in which a 1911 pistol with an 8-round capacity is featured, the second is the 2019 Smith and Wesson catalog cover on which the Smith and Wesson M&P15 pistol and rifle (with LCM) are featured prominently. Neither of those “tactical” firearms existed in 2004:



While there were pistols with LCMs sold and marketed prior to the mid-2000s, they were far less common and certainly not highlighted as a central focus for gun industry growth prior to 2008. The increased prevalence of these “battle pistols” and other similar LCM-capable handguns is closely tied to the rise of the AR-15 and the associated shift to tactical or “offensive” (as opposed to “defensive”) firearms.

**A. Detachable Magazines, Large Capacity Magazines, Large Capacity Ammunition Feeding Devices**

Magazines are containers which hold ammunition in spring-loaded preparation for feeding into the receiver of a firearm. By contrast, clips, while sometimes confused with magazines, are different and can generally be described as small holding devices that retain cartridges in preparation for faster loading into magazines. Magazines can either be “fixed,” meaning they cannot be removed from the gun and are integral within the gun, or “detachable,” meaning they are not internally or permanently attached to the firearm. Many firearms, including some of the most revered self-defense firearms ever built, incorporate fixed magazines which means that these containers are permanently affixed to, or inside the firearm. Magazines of this sort can be temporarily or permanently “plugged” or shortened to regulate capacity. Examples include most pump and semiautomatic shotguns where a tubular magazine is affixed under the barrel. Many rimfire rifles, including many semiautomatic designs, as well as many lever action rifles incorporate the same general fixed tubular magazine design, and Washington’s law exempts these sorts of designs. Many bolt-action hunting rifles utilize a fixed “box magazine” design in which ammunition must be loaded into the permanent “box” below the bolt, and then fed into the receiver from that magazine with each cycle of the bolt. For “fixed magazine” firearms, in order to reload, the shooter must stop shooting and reload the magazine one cartridge at a time before resuming shooting.

Conversely, detachable magazines enable a shooter to replace an empty or depleted magazine with a fresh magazine to resume firing in a manner that is much faster than stopping to reload fixed magazines. Unlike fixed magazines, detachable magazines can be preloaded and transported at the ready with the gun, effectively greatly increasing the potential number of rounds fired in any given period of time. For example, a competent shooter with a common fixed-magazine bolt-action rifle may be able to accurately fire 15 to 20 rounds per minute with long pauses to reload whereas a competent shooter with an AR-15 and preloaded large capacity

magazines can accurately fire more than 100 rounds per minute with very short pauses to change magazines. This comparison also generally applies to handguns.

Pistol shooters with large capacity magazines can fire more rounds per minute than the same shooter with lower capacity magazines and many more rounds than shooters of more traditional self-defense handguns such as revolvers. Handguns with high capacity magazines have often been used in notable mass shooting events such as the 2011 Tucson, Arizona, shooting involving Congresswoman Gabby Giffords and the mass shooting at Virginia Tech University in 2007 in which 33 people were killed and 23 more were injured.

Detachable magazines typically hold as few as 5 or as many as 100 or more ammunition rounds but will also function with a single round. It is my experience that magazines which limit capacity to as few as 5 rounds are commonly available and are often legally mandated for hunting in many states. It is also my experience that even if large capacity magazines are available or sold with firearms today, all firearms companies offer lower capacity options (often 10 round versions to comply with laws in various states).

There is no difficulty in obtaining lower capacity or standard capacity magazines for virtually any firearm. These are often sold by manufacturers, retailers and online sellers, and have been for many years, as normal accessories. Some retailers now also offer these magazines in retail categories they refer to as “compliant magazines.” This is a marketing description of one such retail magazine section from noted industry reseller Righttobear.com and is typical of others in the firearms industry: “Residents of a number of states are forbidden by law to have large-capacity ammunition magazines that hold more than 10 rounds, in some cases even 7 rounds. We carry a full inventory of magazines designed to meet some state restrictions. Each of the AR 10-round magazines we sell meet or exceed our high standards for any product we sell. All are based on proven designs, with the simple restriction of only holding 10 rounds. If you are in the market for a 10-round AR magazine, check out the selection we offer here. You will find magazines from several manufacturers, designed to fit a number of ammo calibers. These AR 10-round magazines

allow you to customize your rifle while helping to meet some state restrictions. You can get 10-round mags that won't interfere with the other accessories on your rifle. Find the right 10-round AR mag for your needs, and get it on order today!"<sup>1</sup>

Despite the recent proliferation of large capacity magazines, it is important to note that there is no known firearm that requires a large-capacity magazine to function as designed. By this I mean that all firearms that can accept a large-capacity magazine can also accept a magazine that holds fewer rounds and still function precisely as intended. This is true even of AR and AK-platform rifles. Although many of these rifles are sold with a 30 round magazine, the manufacturers all offer the optional purchase of 10 round or even lower capacity magazines and could easily offer magazines limited to almost any given round count. There are multiple respected reviews of compliant magazines that not only highlight their known reliability but also point out important advantages of smaller magazines to many shooters. For example, the description of a magazine by the popular PewPew Tactical website describes one of the most popular 10 round AR-15 magazines as follows: "The 10-Round PMAG M3 is an option that won't let you down! But the dedicated lower-capacity magazines are also nice because they are shorter—this makes prone or bench shooting easier for most people."<sup>2</sup> By contrast, the same page has a description of a 60 drum magazine stating that "High capacity mags can be finicky."<sup>3</sup>

There are many pistols that are built for magazines of eight rounds or less. One such example is the very popular Model 1911—which was the accepted defensive sidearm of the U.S. Military for decades and is still one of the most widely owned self-defense guns in the United States. Other widely popular guns such as the Sig P938 are also designed to function with seven or eight round magazines and these guns have been widely acclaimed by dozens of notable firearms industry experts as among the most effective concealed carry/self-defense firearms on the

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<sup>1</sup> Offerings of compliant magazines from reseller: <https://www.righttobear.com/ar-10-round-magazines/> (last visited Feb. 10, 2023).

<sup>2</sup> Review of various magazines from PewPew Tactical: <https://www.pewpewtactical.com/best-magazines-ar-15/> (last viewed Feb. 10 2023).

<sup>3</sup> *Id.*

market.<sup>4</sup> While larger 10-plus round magazines exist for these pistols, a smaller magazine (standard seven or eight round) is considered preferable by almost all consumers because the physical size/profile of the shorter magazine is easier to carry, shoot, and conceal.

Still today, guns such as the 1911 and Sig938 are built to function with sub-10 round magazines. With regards to the 1911 design, it is so respected that direct copies are currently reproduced by many gun companies (Smith and Wesson, Ruger, Kimber, Springfield, Rock Island, Dan Wesson, and many other companies build and sell these 1911 pistols) and they are sold in high volumes by most retailers in the United States. These guns are still considered extremely effective self-defense firearms by many of the leading firearms trainers in the country.

For AR-15s and handguns, even where magazines with capacities of more than 10 rounds are prevalent, the industry always offers 10-round or “compliant” magazines as an option. I am not aware of a single case where those magazines have been advertised as inadequate or ineffective, and I am not aware of any other expert or industry advertisement that claims these magazines render a gun defective or unable to function in self-defense situations.

While there is a competitive trend towards increased handgun capacity, there are also many recently introduced handgun models that utilize or offer 10 round magazines and are considered excellent self-defense options by notable industry experts and journalists. The following is a review for a 10-round version of one of the best-selling handguns in the industry offered by notable industry website TheArmoryLife.com: “10 rounds of 9mm in a micro-compact is still a formidable defense. Springfield Armory recently announced the addition of a 10-round version of the Hellcat pistol for shooters in states that require restricted magazine capacities. The new 10-round variant of the Hellcat offers a great self-defense option for owners that live in areas with these restrictions.”<sup>5</sup>

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<sup>4</sup> USA Carry review of Sig 938 9mm handgun: <https://www.usacarry.com/sig-sauer-p938-subcompact-9mm-review/> (last visited Jan. 10, 2023).

<sup>5</sup> Review of Springfield Hellcat 10 round version: <https://www.thearmorylife.com/going-10-rounds-with-the-springfield-hellcat/> (last viewed Feb. 8, 2023).

Revolvers, which have 5 or 6 round capacities, are also considered to be extremely effective self-defense guns. Even the most respected industry experts openly agree on this point and many also point out that the average self-defense situation involves very few shots fired and it is generally accepted that the average self-defense situation involves only 2.2 shots. Related to that truth, the following is an excerpt from a 2015 NRA American Rifleman article on the desirability of revolvers for self-defense and the issue of capacity in defensive situations: “The importance of this difference in ammunition capacity is debatable. Some self-defense gurus support the idea that more is better. Others point out that most civilian situations happen so quickly, with only a few rounds fired (an average of three), that handgun capacity is a moot point.”<sup>6</sup>

Finally, it is important to note that shotguns are not immune from this general trend of becoming marketed as more tactical. Generally speaking, pump action and semi-automatic shotguns utilize a tubular magazine. However, there are now dozens of “tactical” shotgun designs<sup>7</sup> that accept detachable magazines similar to AR-15 designs and some are large capacity. There are also some shotguns that are generally designed to be similar to the AR-15 but chambered in a shotgun cartridge (usually 12 gauge).

## **B. Magazines Are Accessories**

Because a large capacity magazine is not a required component for a firearm to operate, it is characterized as an accessory by the industry. There is a massive market for magazines that far surpasses that of the market for firearms themselves in terms of numeric sales. There are companies, such as Magpul, that entirely specialize in firearms accessories, including large capacity magazines. In fact, most firearms manufacturers do not consider the magazine as integral enough to build their own magazines for their own guns. In almost all cases even the largest gun manufacturers contract with accessory makers who build magazines and then supply them to the gun manufacturer, who then sells the magazines with the guns but also as an “add-on” accessory.

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<sup>6</sup> NRA American Rifleman article on revolvers and capacity in self-defense: <https://www.americanrifleman.org/content/why-choose-a-wheelgun/> (last viewed Feb 1, 2023).

<sup>7</sup> Leading retailer tactical shotgun options: <https://www.impactguns.com/ar-15-shotguns/> (last visited Jan. 29, 2023).

There is ample evidence in the firearms industry of the interchangeability of magazines among firearms. An illustrative case is the KelTec Sub2000 carbine (pictured below). This firearm accepts magazines from other manufacturers, most often Glock. This is advertised as an attribute of the gun. According to KelTec marketing materials; “we offer this awesome carbine in a variety of magazine configurations so you can pair your favorite pistol with your favorite pistol caliber carbine.”<sup>8</sup> The effect is that this firearm is not even linked to any proprietary KelTec magazine but rather to the vast list of accessory magazines, including many LCM options. The KelTec Sub2000 and LCM accessory magazines was one of the guns used in the recent Nashville School shooting. The protruding LCM is clearly visible in the evidence photograph below.<sup>9</sup>



Based on my experience, magazines are a large accessory profit center for the gun industry and sales of these magazines are treated as a category separate from gun sales throughout the sales chain. For example, I am aware of compensation programs from gun manufacturers that offer increased percentage in sales commission payments for sales of magazines as opposed to firearms. Retailers often incentivize their employees to push a buyer to purchase additional magazines

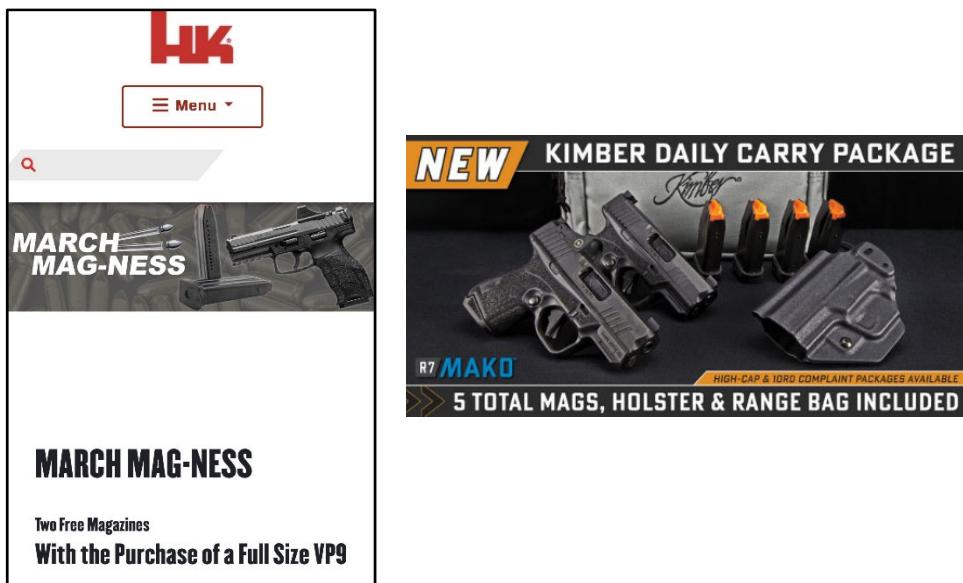
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<sup>8</sup> KelTec Sub2000 marketing from KelTec Website: <https://www.keltecweapons.com/firearm/rifles/sub2000/> (last viewed April 8, 2023).

<sup>9</sup> Documentation of guns used in Nashville shooting: <https://www.cnn.com/2023/03/30/us/nashville-shooting-guns-used/index.html> (last viewed April 8, 2023).

because it is known that consumers view the purchase of magazines as separate from the gun and they are therefore viewed as “add-on sales” for retailers. Many retailers like Palmetto State Armory (one of the largest firearms retailers in the United States) focus on accessory sales along with firearms and clearly list magazines in their “general accessory” section.<sup>10</sup>

Almost always, these magazines are manufactured by outside contracted suppliers (not the manufacturer of the firearm). The high degree to which a magazine is viewed as an accessory by firearms retailers is reinforced by the fact that when manufacturers add additional magazines to the gun at time of sale as an incentive to encourage consumers to purchase the gun, the practice often upsets the retailers who view this as taking away an accessory sale they could have made. Below are two recent promotions from firearms manufacturers which advertise magazines as sales incentives. Note that the second also offers 10-round magazine options:



### C. History and Marketing of Tactical firearms, Assault Weapons, and their Accompanying Large Capacity Magazines

While there is no universally accepted definition of an assault rifle, the term generally refers to a firearm that incorporates a set of physical features that increase the effectiveness of killing enemy combatants in offensive battlefield situations, usually in close and medium-range

<sup>10</sup> General accessories offered by Palmetto State Armory: <https://palmettostatearmory.com/accessories.html> (last viewed Feb. 1 2023).

warfare. This list of features generally includes but is not limited to: pistol grips, semi-automatic or fully-automatic fire control systems, the ability to accept detachable magazines, folding or telescoping stocks, and barrel shrouds. Washington's large capacity magazine regulation does not affect assault weapons; however, the recent history and marketing of large capacity magazines has become indelibly intertwined with that of assault weapons. For example, when looking at the silhouette of an assault weapon the large capacity magazine is often prominently visible, especially on images utilized by extremists groups.

In my experience these magazines are particularly important to people who display the loaded magazines as a means to intimidate with the threat to deploy offensive action. The following photographs illustrate this fact. The first is from just outside the Washington State Governor's residence in Olympia, Washington, on January 6, 2021, when armed protestors breached a perimeter fence.<sup>11</sup> The second image is of a Proud Boys Member wearing a t-shirt bearing images of assault weapons loaded with LCMs over the acronym "FAFO," which means "fuck around and find out."

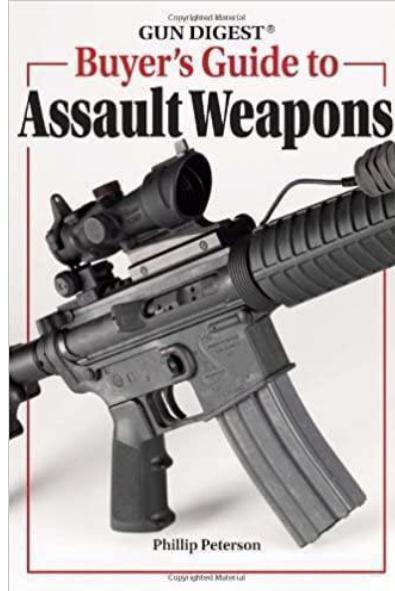


Additionally there will be clearly visible images of prominent large capacity magazines in all the advertisements that follow. The Court may hear from industry spokespeople who claim that these assault weapons and LCMs are only tools of self-defense. They may also claim that these items have a long and "common" history in the United States. In my opinion these are false assertions created to rationalize the recent increased sales and marketing of assault weapons and

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<sup>11</sup> FoxNews story on armed protests in Washington state: <https://www.foxnews.com/us/protests-us-washington-statehouses-lawmakers-evacuated> (last viewed Feb. 24, 2023).

LCMs. I therefore believe it important to include here a brief history of the assault weapon, tactical firearms, and industry advertising to help the Court understand the truth about large capacity magazines and the actual source of their prominence in current day gun culture.



All AR-15 firearms are derivatives of the Armalite Rifle (AR) model 15, which was originally designed for the United States Military in the late 1950s. The AR-15 was specifically designed to satisfy clearly stated military requirements for an assault rifle. The AR-15 incorporated features that achieved these requirements, which included: being lightweight, easily portable, accurate, high-capacity-capable, low recoil, and fast-firing as these are the features of an effective offensive weapon. The AR-15 was therefore adopted by the U.S. military in the early 1960s. The firearms industry openly referred to these and all similar weapons as “assault weapons” and “assault rifles” as late as 2008, as evidenced by this 2008 issue of Gun Digest, a publication which is commonly accepted in the industry as a prominent authority and advertising venue:<sup>12</sup>

Of particular importance for this case, it is critical to understand the “chambering” or cartridge the AR-15 and AK-47 rifles are designed to accept. The standard cartridge for the AR-15 is a .223Rem (5.56 is NATO equivalent) which was selected by the military for very specific

<sup>12</sup> One of many listing for archived issues of Gun Digest for sale from various resellers: <https://www.amazon.com/Digest-Book-Assault-Weapons-Fifth/dp/087341778X> (last visited Jan. 30, 2023).

reasons. While it is commonly reported that the AR-15 is a “high power” weapon, a singular .223 cartridge is not in fact “high power” compared to almost all other hunting rifles that have been sold for more than a century in the United States. However, it was the small size of the .223 and 5.56 cartridge that was particularly important to the military because it allowed soldiers to greatly increase capacity in their rifles and magazines. Moreover, smaller rounds weigh less, meaning that this also increased the number of extra rounds soldiers could carry around. In other words, it is the large capacity that the military saw as most important for offensive military operations and it is the large capacity that, in the opinion of military decision makers, made the guns ideal offensive battle rifles.

The bullets from these smaller and faster cartridges are very deadly at short and medium ranges. These cartridge characteristics were selected because they result in a rifle that can be high-capacity, accept loaded magazines which are easy to transport, and can also be very easy to fire repeatedly while staying on target. The reasoning for the military decision on this chambering is summed up in this article from *Business Insider*: “The smaller rounds weighed less, allowing troops to carry more ammunition into the fight. They also created less recoil, making it easier to level the weapon back onto the target between rounds and making automatic fire easier to manage. Tests showed that troops equipped with smaller 5.56 mm rounds could engage targets more efficiently and effectively than those firing larger, heavier bullets.”<sup>13</sup> This is why AR-15 and AK-47 platform weapons remain the assault weapon of choice for military operations in short and medium range scenarios where repeated, high volume and accurate offensive shooting is desired.

These same general attributes, especially the ability to accept large capacity magazines, are those which appear to be desired by many recent mass shooters in the United States. LCMs were used in the recent shootings in Buffalo, New York; Highland Park, Illinois; and in Uvalde, Texas, just to name a few. In Uvalde, the shooter used LCMs to easily transport nearly 1700 rounds of ammunition to Robb Elementary school. According to law enforcement officials quoted in a CBS

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<sup>13</sup> Story on background of AR-15 and chambering history, <https://www.businessinsider.com/why-did-us-military-switch-from-762mm-round-to-556mm-2019-9> (last visited on Jan. 27, 2023).

article: “A law enforcement source told CBS News that the amount of ammunition that the suspect brought with him is more than what an average U.S. soldier would go into basic combat with, apparently planning on a massive gun battle.”<sup>14</sup>

While the AR-15 and its derivatives are by far the most common assault-style rifles in the United States, there are many other firearms that share the same purpose and generally have the same defining features, including the ability to accept large capacity magazines. Those firearms include firearms utilizing all or part of the AK-47 platform as well as many others. The original patent for the gas operating system central to the AR-15 being rapidly fired with minimal recoil expired in 1977,<sup>15</sup> which subsequently allowed the engineering prints for the AR-15 to be publicly available to all firearms companies.

From that point forward, in 1977, there could have been a large-scale, immediate, and legal proliferation of direct copies of these rifles and other high capacity semi-automatic guns into the United States commercial market. But that did not happen, at least not until nearly two decades later. In fact, when I first started my work in the gun industry in the 1990s, assault weapons, such as AR-15s and the 30-round magazines we see in advertising and mass shootings today, were not common, and within the gun industry the acceptance or promotion of this product category was thought to be irresponsible and potentially dangerous.

This former self-imposed industry “regulation” was publicly voiced by William B. Ruger, the widely revered founder of Sturm Ruger, which is now one of the largest companies in the industry. During an interview with Tom Brokaw, he stated what was common industry consensus: “No honest man needs more than 10 rounds in any gun.” Ruger went on to clarify what most industry executives believed to be wise policy: “I never meant for simple civilians to have my 20 or 30 round magazines.”<sup>16</sup> For decades, opinions like that of William Ruger were reinforced

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<sup>14</sup> CBS article on Uvalde Shooting, <https://www.cbsnews.com/news/valde-shooting-more-ammunition-than-us-soldiers-carry-rounds-into-combat/> (last viewed Feb. 1, 2023).

<sup>15</sup> Gas Operated Bolt and Carrier System, U.S. Patent No. 2,951,424 (accessible at <https://patents.google.com/patent/US2951424A/en>).

<sup>16</sup> Article on Bill Ruger’s position on LCMs, <https://www.nhregister.com/connecticut/article/Magazine-limits-were-first-proposed-by-11435654.php> (last viewed Feb 1 2023).

throughout the industry in hundreds of large and small ways and this sentiment was still very prevalent when I entered the industry in 1995. Almost everyone I encountered believed that AR-15s were military assault weapons and the large capacity magazines which often accompanied these weapons were dangerous and were not to be sold or displayed to the civilians.

This commonly held opinion presented a challenge for Colt, which at that time was the only notable company focused on selling AR-15s to civilians. Colt realized that AR-15s were obviously a military weapon but the company also sought to sell the guns to civilians. The quandary for the company is fully displayed in the images below. First, see the advertisement below in their 1964 catalog<sup>17</sup> in which Colt seeks to delicately market the AR-15 as a sporter rifle (note the non-Large Capacity Magazine included):



<sup>17</sup> 1964 Colt catalog from: <https://thecoltar15resource.com/1965-product-trifold/> (last viewed Feb. 23, 2023).

This marketing met with very disappointing results. In response to very low commercial sales, Colt released new models which hinted at the military or “Government” use for the rifles. According to the 1987 company press release, these rifles “Had all of the features consistent with the M16” and were “manufactured on the same production line as the M16.” But even in that increasingly militaristic 1987 marketing, the rifles were still not sold or marketed with an LCM and I am unaware of any claim that asserted LCMs were necessary to the function of these rifles or to self-defense.<sup>18</sup>

**NEW FROM COLT FIREARMS**  
A Heritage of Fine Craftsmanship

**FOR IMMEDIATE RELEASE:**

**Colt® Introduces The AR-15® A2 Gov't. Model Rifle and Carbine**

The new Colt AR-15A2 Gov't. Model .223 semi-automatic rifle and Gov't. Carbine incorporate state of the art improvements from the M16.

These latest additions to Colt's offering of utility rifles and carbines for sportmen have the military type upper receiver used in the M16A2 rifle manufactured by Colt for the United States Marine Corps and Army.

These new guns replace the AR-15A2 Sporter II rifle and AR-15A2 carbine. The most significant difference between the new guns and the Sporter rifle and carbine is the rear sighting system which is housed in the receiver's carrying handle. It has dual apertures which are adjustable for both windage and elevation out to 800 meters. A square front sight post is adjustable for zeroing. There is also provision in the handle for the attachment of the optional Colt telescopic sight.

All of the guns in the AR-15A2 series have features consistent with the M16A2: Time tested gas operated mechanism, firing from a closed bolt position • Forward bolt catch • Detachable magazine • Ergonomically designed stock and pistol grip are made from new, more impact resistant materials • Handguard is round, has improved heat deflector and is ribbed for greater grip control • Cartridge case deflector for left handed shooters on all models.

The AR-15s are manufactured in the same factory and on the same production line as the world famous M16. The Colt M16 family is the most battle proven combat rifle in the free world.

New Colt AR-15A2 Gov't. Model Rifle



New Colt AR-15A2 Gov't. Carbine



*Both models have target style sights adjustable for windage and elevation out to 800 meters.*

These examples from Colt are illustrative of how important the marketing and inclusion of LCMs would become. Colt's sales were famously low, as were the sales from a handful of other companies who sought to sell AR-15s. That is because “mainstreaming” of those guns was strongly resisted by most leaders in the gun industry well into the mid-2000s. The voluntary prohibition

<sup>18</sup> 1987 Colt Press release: <https://thecoltar15resource.com/1987-new-product-press-release/> (last viewed Feb. 23, 2023).

obviously extended to LCMs as Colt's product listings did not include or picture them. The industry prohibition had a dramatic effect and the evidence is borne out in the low commercial sales of AR-15s, almost none of which were equipped with LCMs.

During the period between 1964 and 1994, first for Colt, and then also for all companies who produced the guns after Colt's patent sunset, commercial AR-15 sales averaged fewer than 27,000 units per year for a total of about 787,000 units in the 30-year period from 1964 to 1994.<sup>19</sup> As an example of the rarity of assault weapons in the firearms industry during those years, consider that in 1990, there were about 4.4 million guns sold in the United States (total reported U.S. production + total imports - total exports).<sup>20</sup> <sup>21</sup> <sup>22</sup> According to the NSSF, 74,000 of those were assault weapons, which means that assault weapons were only 1.6% of 1990 domestic gun sales.

During the 10-year period of the federal assault weapons ban (1994–2004), AR-15s were legal to produce and sell as long as they did not incorporate LCMs or combine additional features as enumerated in that legislation. In many ways, the ban simply reinforced the same voluntary restrictions that the industry had been mostly imposing on itself.

Importantly for this case, virtually all pistols were also legal to sell during that federal ban, including Glock pistols, which were the most notable “high-capacity” handguns of that time. While there were far fewer high-capacity handgun models then, they did exist. In proof that LCMs are not necessary, Glock and other manufacturers who produced “LCM compatible” handguns between 1994 and 2004 did not cease selling the guns after the ban. Nor did they claim the newly included “compliant capacity” handguns were defective. Rather they simply offered their guns with compliant 10 round magazines. This same simple shift happened across the board for all

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<sup>19</sup> Estimating AR-15 Production, 1964-2017 (Nov. 9, 2019), [http://www.alternatewars.com/Politics/Firearms/Count/AR15\\_Production.htm](http://www.alternatewars.com/Politics/Firearms/Count/AR15_Production.htm) (last visited Jan. 12, 2023) (compiling data from the Bureau of Alcohol Tobacco, Firearms & Explosives' *Annual Firearms Manufacturing and Export Reports*, among other sources).

<sup>20</sup> Total firearms production by year: <https://www.atf.gov/firearms/docs/report/2021-firearms-commerce-report/download>.

<sup>21</sup> Total firearms imported by year: <https://www.statista.com/statistics/215569/number-of-imported-firearms-to-the-us/>.

<sup>22</sup> Total firearms exported by year: <https://www.statista.com/statistics/215569/number-of-imported-firearms-to-the-us/>.

firearms that had previously been sold with LCMs and it still happens today for handguns and AR-15 rifles.

During the 1994 to 2004 federal “ban,” assault weapons, especially the AR-15 variants, became a symbolic image of resistance for the gun industry. By 2004, I observed a few small industry members who were gearing up to use the battle over LCMs and AR-15s as a marketing tool to sell firearms.

But even after the federal legislation expired, the gun industry did not immediately begin producing or selling these guns in large numbers. That is because there was a continued general agreement by vast majority of industry leaders that these guns, which were very clearly designed for military-style, offensive (i.e., attacking) use, and related gun paraphernalia—including virtually all large capacity magazines, which were generally also considered to be for military-style, offensive use—would not be displayed at trade shows or used at industry-sponsored shooting events.

This is why until well into the mid-2000s, the industry would not allow any company to display any “tactical” gear in the main section of the largest industry trade shows like S.H.O.T. (the Shooting Hunting Outdoor Trade show, which is governed by NSSF). It was, and still is, common understanding in the industry that “tactical” denoted “planned military or police action.” At that time, in order to enter the special Military and Law Enforcement section of the S.H.O.T. show, where this tactical gear was displayed, an attendee was required to present verified military or law enforcement identification credentials. These rules were enforced by the industry because it was universally accepted that firearms designed for tactical or “assault” purposes deserved this special regulation or voluntary responsibility.

This formerly understood voluntary prohibition also extended to the many gun stores and all of the largest sporting goods retailers in the country. Almost none would sell or display assault weapons or AR-15s or AK-47s in their stores until the mid-2000s. This remained true as late as 2006. It was not until very recently that the gun industry began to push AR-15s, LCMs, and other assault-style guns, leading to the more prominent marketing we see today. The following table of

data compiled by the National Shooting Sports Foundation (NSSF), the firearms industry trade group, clearly illustrates that sales of such guns (MSR, AR-15 and AK-47) have increased dramatically. In 2020, assault weapons comprised 12.2% of total gun sales, seven times higher than the 1990 percentage. In numeric terms sales have increased by nearly 3,700% from 1990 until now, despite the fact that no federal, and few state restrictions on such guns existed in 1990. (74,000 units in 1990 versus 2,798,000 in 2020):<sup>23</sup>

### Estimated Modern Sporting Rifles in the United States 1990 – 2020

Year	US Production less exports of MSR/AR platform	US Import less exports of MSR/AR, AK platform	ANNUAL TOTAL
1990	43,000	31,000	74,000
1991	46,000	69,000	115,000
1992	33,000	72,000	105,000
1993	62,000	226,000	288,000
1994	103,000	171,000	274,000
1995	54,000	77,000	131,000
1996	27,000	43,000	70,000
1997	44,000	81,000	125,000
1998	70,000	75,000	145,000
1999	113,000	119,000	232,000
2000	86,000	130,000	216,000
2001	60,000	119,000	179,000
2002	97,000	145,000	242,000
2003	118,000	262,000	380,000
2004	107,000	207,000	314,000
2005	141,000	170,000	311,000
2006	196,000	202,000	398,000
2007	269,000	229,000	498,000
2008	444,000	189,000	633,000
2009	692,000	314,000	1,006,000
2010	444,000	140,000	584,000
2011	653,000	163,000	816,000
2012	1,308,000	322,000	1,630,000
2013	1,882,000	393,000	2,275,000
2014	950,000	237,000	1,187,000
2015	1,360,000	245,000	1,605,000
2016	2,217,000	230,000	2,447,000
2017	1,406,000	158,000	1,564,000
2018	1,731,000	225,000	1,956,000
2019	1,679,000	169,000	1,848,000
2020	2,466,000	332,000	2,798,000
<b>TOTALS</b>	<b>18,901,000</b>	<b>5,545,000</b>	<b>24,446,000</b>

Source: ATF AFMER, US ITC, Industry estimates

<sup>23</sup> [https://www.nssf.org/wp-content/uploads/2022/07/EstMSR1990\\_2020.pdf](https://www.nssf.org/wp-content/uploads/2022/07/EstMSR1990_2020.pdf) (last visited Jan. 12, 2023).

It is my experience that this proliferation is the result of a direct and purposeful industry marketing effort to assert that these guns are “common.” In 2009, as part of this effort, the firearms industry through the NSSF, facilitated a public re-branding of assault rifles in an effort to make them more socially acceptable. As such, the NSSF broadly encouraged an industry-wide effort to rename such guns “Modern Sporting Rifles” or MSRs. This is not unlike the effort of Colt to market a “Sporting rifle” in previous decades, but unlike the failed marketing of Colt in the 1980s, beginning in the late 2000s the guns themselves were increasingly sold with LCMs and steadily “improved” in many functional areas that increase the lethality of a military assault rifle.

At the same time the NSSF was softening the image of these weapons with the MSR campaign, many individual assault rifle companies began to market the guns in ways that dispensed with any attempt to pretend the guns were “sporting” firearms. Despite the fact that the rifles and LCMs were not sporting guns, all industry members, including me, were strongly encouraged to stop using the term “assault rifle” or even “tactical weapon” because those terms were thought a too-transparent label that referenced offensive military assaults which would therefore harm the public perception of such guns and decrease the sales of companies that build them.

The terms “Assault Rifle” and “Assault Weapon” were first used to describe the German WW2 “Sturmgewehr”-44 rifle, which roughly translates to “Storm” or “Assault” rifle.<sup>24</sup> The name was subsequently applied to many similar rifles in the coming decades including dozens of models sold in the United States. Well into the 2000s, almost everyone I knew in the industry used the terms “assault weapon” and “assault rifle.” During my career, I personally experienced the NSSF’s overt effort to deflect away from that moniker by misleadingly reframing the origin of this terminology. This effort is still ongoing today, and commonly referenced industry instructions remain on the NSSF website: “If someone calls an AR-15 or other semi-automatic rifle an ‘assault weapon,’ he or she either supports banning these firearms or does not understand their function and sporting use, or both. Please correct them. ‘Assault weapon’ is a political term created by California anti-gun legislators to ban some semi-automatic rifles there in the 1980s.”<sup>25</sup>

Since the late-2000s there has been a rapid increase in the number of companies that manufacture and market versions of AR-15s, other similar assault weapons which are now increasingly sold and marketed with LCMs. This has resulted in a transformation of the marketplace from only a few AR-15 manufacturers in 2000, to several hundred AR-15/assault rifle companies today. The list of AR-15 manufacturers now includes small, medium, and the largest firearms companies in the United States, all of whom are striving to obtain market share with derivatives of what is effectively the same product.

The crowded nature of the marketplace has created a highly competitive environment resulting in thousands of “continuous improvements” in AR-15-style firearms sold to the general public as a way to encourage consumers to buy one rifle over another. Over time, these improvements have generally been incorporated on most rifles across the marketplace and the result are firearms that are almost universally more accurate, more portable, and more specifically tailored to produce lethal outcomes. These guns are now also far more likely to be sold with an LCM.

Mirroring the trend in AR-15s, there has also been a notable increase in the prevalence in the civilian marketplace of handguns designed to accept large capacity magazines. While it is generally true that larger capacity handguns have existed in the industry for several decades, it is also true that until the mid-2000s there was little focus upon them as a central source for industry product development and growth. It is my opinion that the increased marketing of the AR-15 and the LCMs often sold with these rifles was the catalyst for the related change in the handgun market.

The recent shift to focus on tactical, offensive, higher capacity handguns has resulted in a competitive trend that is accelerating and therefore creating an “arms race” within the industry. Where there were once relatively few such guns or marketing efforts, now most of the largest firearms makers in the United States offer several versions of handguns that can accept large capacity magazines. Today “increasing capacity” is used as a central competitive marketing tool.

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<sup>24</sup> CNN article on the derivation of Assault Rifle term: <https://money.cnn.com/2016/06/29/smallbusiness/german-sturmgewehr-assault-rifle/index.html> (last viewed Feb. 2023).

<sup>25</sup> NSSF MSR marketing webpage, <https://www.nssf.org/msr/> (last visited Jan. 20, 2023).

Even Ruger, the company founded by Bill Ruger who plainly stated “no honest man needs more than 10 rounds in any gun,”<sup>26</sup> now touts the 12+1 round capacity of its new Max9 pistol.<sup>27</sup>

Because guns generally do not wear out, and because competitive markets force companies to innovate, most handgun companies now use “increasing capacity” as a way to find advantage in the marketplace. In my opinion, this is a byproduct of market competition, not of self-defense necessity.

The following is a 2023 listing of the 12 top-selling handguns from Sportsmans Warehouse, which is one of the leading firearms retailers in the United States. As will become evident in following sections of this report, fully functioning 10-round (or even lower) magazines are sold for every model listed here. However, it is also true that eleven of twelve models below are sold and marketed with LCMs and all of those eleven have been developed and released within the last 10 years. In other words, handguns being sold with LCMs in such dominant fashion is a recent result of competitive new-product development and the trend is accelerating.<sup>28</sup>

#### Top Selling Handguns (62)

Refine By: Price ▾ Sort By: Relevance ▾ PER PAGE: 20 ▾

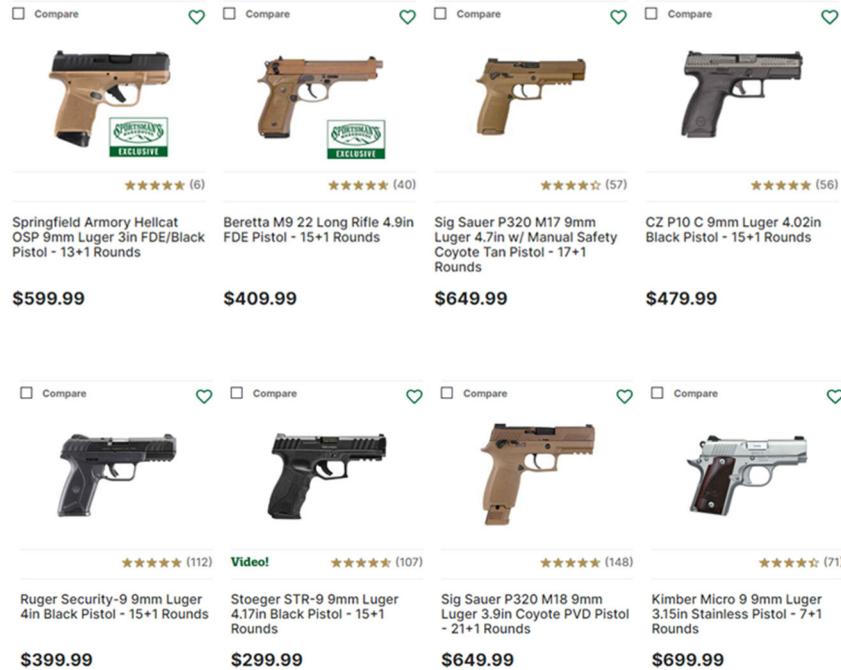
1 2 3 4 »

	Compare	Compare	Compare	Compare	Compare		
	★★★★★ (65)		★★★★★ (187)		★★★★★ (119)		★★★★★ (60)
Glock 19 Gen5 Front Serrations 9mm Luger 4in Black nDLC Pistol - 15+1 Rounds	\$539.99	Sar USA SAR9 9mm Luger 4.4in Black Pistol - 17+1 Rounds	\$429.99	Ruger 57 5.7x28mm 4.94in Black Nitride Pistol - 20+1 Rounds	\$749.99	Springfield Armory Hellcat Pro 9mm Luger 3.7in Melonite Black Pistol - 15+1 Rounds	\$619.99

<sup>26</sup> Bill Ruger Article: <https://www.nhregister.com/connecticut/article/Magazine-limits-were-first-proposed-by-11435654.php#:~:text=%22No%20honest%20man%20needs%20more,Connecticut%20gun%20maker%20Sturm%2C%20Ruger> (last viewed March 13, 2023).

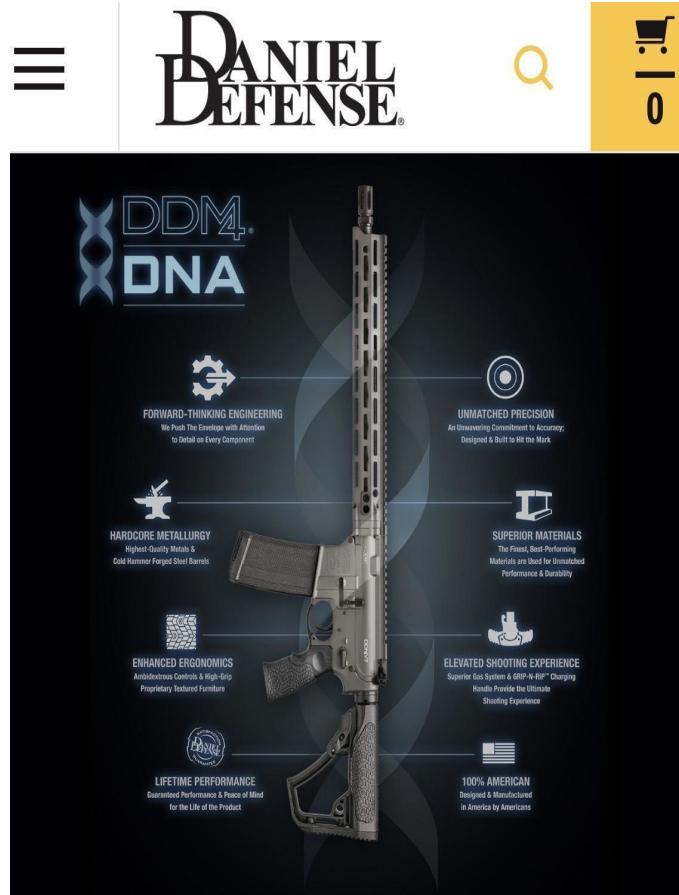
<sup>27</sup> Ruger Max pistol: <https://www.ruger.com/products/max-9/models.html> (last viewed Feb. 1, 2023).

<sup>28</sup> Screen captures from Sportsman's Warehouse Website, <https://www.sportsmans.com/top-selling-guns-of-2022/top-selling-handguns/c/cat141689> (last viewed Feb. 20, 2023).



This recent change in the handgun market is led by innovations and “social license” created in the AR-15 market. Modern AR-15 marketing dramatically increases the prevalence of LCMs in new firearms because a major part of that marketing is centered on increasing maximum offensive killing capacity. AR-15s and LCM-capable pistols are now increasingly prevalent in what the industry calls the “tactical market,” a term that properly labels the guns as tools for a planned military action. In my opinion, LCMs are not necessary for self-defense, but they are integral to this marketing both in handguns and in rifles.

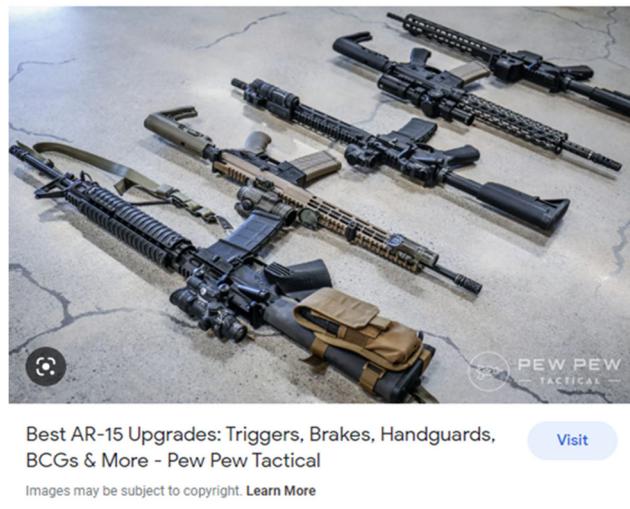
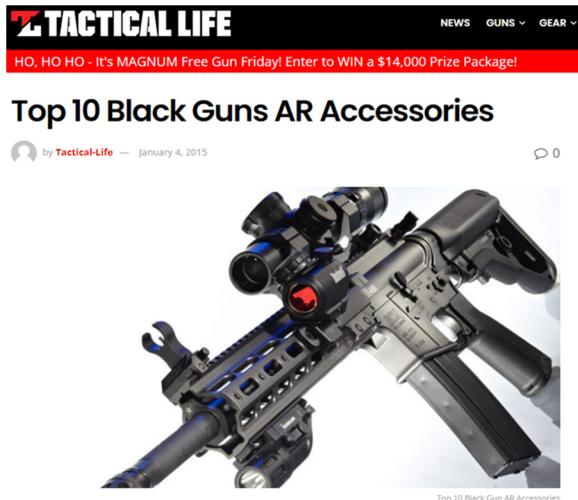
The trend towards increased capacity and lethality is easy to see in AR-15s especially when current rifles are compared to the assault rifles requested and then adopted by the U.S. military or those sold by Colt 30 years ago. The commercially available AR-15s of today are more reliable, more accurate, more ergonomic, and therefore more effective. This trend of “improvement” continues and is aggressively advertised each day by dozens of firearms companies. For example, this is a typical marketing page<sup>29</sup> for an AR-15 manufacturer in which a prominent company advertises the various ways in which its features “improve” upon the basic AR-15 (additionally notice the large capacity magazine protruding in front of the pistol grip):



The increase in the AR-15 market has also facilitated an increase in accessory availability for the AR-15 and similar firearms. These accessories are commonly referred to as “furniture” because they are items a rifle owner can add to the gun, just as a person would add furniture to personalize an apartment.

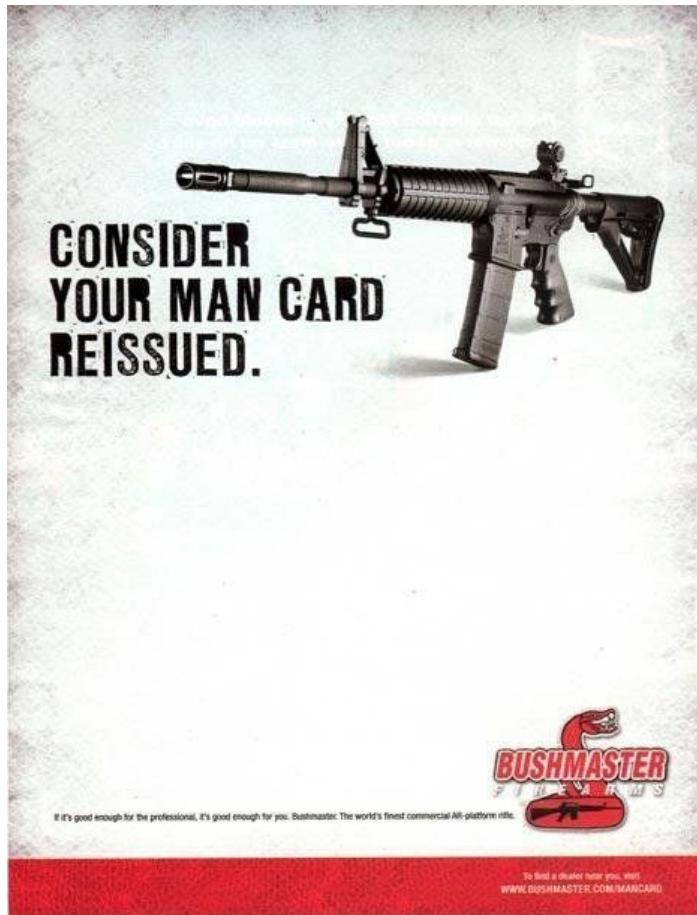
<sup>29</sup> <https://danieldefense.com/daniel-dna> (last visited Jan. 10, 2023).

Most AR-15s and similar firearms now incorporate features designed to accept one or more of dozens of accessories (furniture), all of which are designed and marketed to increase the effectiveness of the rifle in battlefield situations. The list of accessories includes hundreds of LCM options, highly-effective electronic optics, more sensitive triggers, devices such as bump stocks and modified trigger systems which convert guns to near-fully-automatic rates of fire, forward and pistol grip options, tactical lights, laser-pointing devices, and many others. Almost none of these accessories were available to the United States military at the time of the AR-15's adoption in the early 1960s, and in many cases U.S. civilians can now outfit rifles in a manner more lethal than the rifles carried by the military. There are now hundreds of companies and retailers who encourage customers to make their rifles more effective by accessorizing. The following are examples of industry marketing efforts which illustrate this trend (and note that every example includes a rifle equipped with an LCM):<sup>30</sup>



<sup>30</sup> AR-15 accessory article examples: <https://www.tactical-life.com/gear/top-10-black-guns-ar-accessories/> (last visited Jan. 10, 2023), and <https://www.pewpewtactical.com/best-ar-15-furniture-accessories/> (last visited Jan. 10, 2023).

The competitive AR-15/assault rifle marketplace has also resulted in manufacturers seeking to create new customers through professional, targeted marketing campaigns. Most of these campaigns prominently feature large capacity magazines and overtly target young American males, such as this example from 2010:



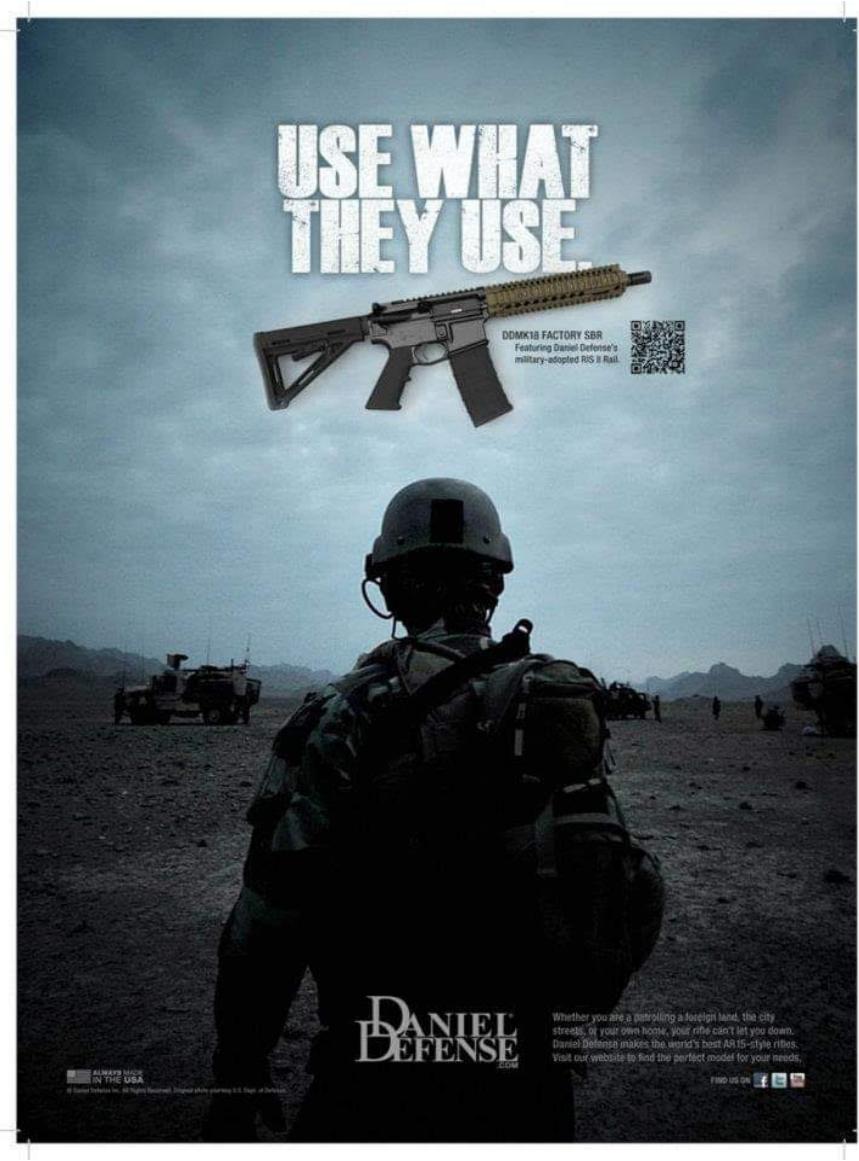
The gun and LCMs advertised in this campaign (Bushmaster XM15 rifle) have been used by young men in notable mass shootings, including those in Sandy Hook, Connecticut, and Buffalo, New York.<sup>31</sup>

Other prevalent AR-15 marketing encourages potential customers to buy and deploy the same weaponry and the same large capacity magazines as elite Special Forces units of the U.S. military. It is my experience that most of these customers are young men. In other words, despite the “modern sporting rifle” claims, marketing within the firearms industry consciously capitalizes

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<sup>31</sup> Bushmaster XM15 Mancard advertising article: <https://www.ammoland.com/2010/05/bushmaster-man-card/#axzz7q0HQao58> (last visited Jan. 10, 2023).

on AR-15-style weapons and large capacity magazines as offensive military weaponry sold to young men, as in this example:



A version of the Daniel Defense Rifle in this advertisement was the weapon used in the Uvalde, Texas shooting.<sup>32</sup>

Smith and Wesson's AR-15 variant is now widely reported to be the best-selling AR-15 in the United States. These rifles and their accompanying large capacity magazines have been used

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<sup>32</sup> Michael Daly, *Uvalde Shooter's Gunmaker Hypes 'Revolutionary' New Killing Machine*, <https://www.thedailybeast.com/valde-shooter-salvador-ramos-gunmaker-daniel-defense-hypes-revolutionary-new-killing-machine> (last visited Jan. 10, 2023) (showing Daniel Defense advertisement).

in notable mass shootings including the Parkland, Florida, school shooting and the Highland Park, Illinois, July 4th parade shooting. Smith and Wesson's primary customers for this rifle are U.S. civilians who are generally not trained in military or police tactics nor monitored by military safety protocols, but the company's chosen name for this rifle—the M&P15, which means "Military and Police AR-15"—suggests buyers will be equipped with the same offensive rifles as trained military and police units.<sup>33</sup> Here is an image of the rifle, again notice the conspicuous large capacity magazine:

**SPECIFICATIONS**

Model:	M&P15 SPORT™ II	Overall Length:	35.0" (88.90 cm) Extended
SKU:	I0202	Grip:	Polymer
Caliber:	5.56 mm NATO	Weight:	6.45 lbs. (2,925.7 g)
Action:	Gas Operated Semi Auto	Barrel Material:	4140 Steel
Capacity:	30+1 Rounds	Upper Material:	7075 T6
Barrel Length:	16" (40.64 cm)	Lower Material:	Aluminum
Front Sight:	Adj. A2 Post	Finish:	Matte Black
Rear Sight:	Folding Magpul® MBUS®	UPC Code:	022/88868104

**OTHER FEATURES**

- Forged, Integral Trigger Guard
- Armornite® Finish (Durable Corrosion Resistant Finish)
- Chromed Firing Pin
- Forward Assist
- Dust Cover
- 30 Round PMAG®
- Rifling: 1/9, 6 groove

An increasing number of smaller AR-15 manufacturers now regularly seek to grow their market by advertising in ways that depict young men with large capacity magazines in AR-15s inciting or engaging in armed urban warfare, such as in this recent example from AR-15 maker Spike's Tactical, which encourages men to deploy their AR-15s (each one equipped with large capacity magazine) in armed conflict across the United States:<sup>34</sup>

<sup>33</sup> <https://www.smith-wesson.com/product/mp-15-sport-ii> (last visited Jan. 10, 2023).

<sup>34</sup> Spikes Tactical Antifa advertisement: <https://www.spikestactical.com/press/left-wing-media-outlets-lose-minds-over-gun-ad-disregard-basic-rules-of-journalism/> (last visited Jan. 10, 2023).



In the last 5 years there is an increasing trend from accessory manufacturers to offer even higher capacity magazines for rifles and many handguns. An illustrative example is a picture from the highly touted 2018 ProMag introduction of their 50 round drum magazine for Glock Pistols.<sup>35</sup>



Many of these higher capacity product developments are first pioneered accessory companies such as in the case above. But many gun companies also offer increasingly large

capacity magazines. Verification of this trend is found in The ArmoryLife's review of the new Springfield Armory 35-round magazine for their popular XD pistols (pictured below): "We have all seen the growth of enhanced capacity magazine systems, from drum magazines to stick magazines, but most of them come from the aftermarket. Well, not anymore. Springfield has given us a new 35-round extended magazine for the XD-M family of 9mm pistols."<sup>36</sup>



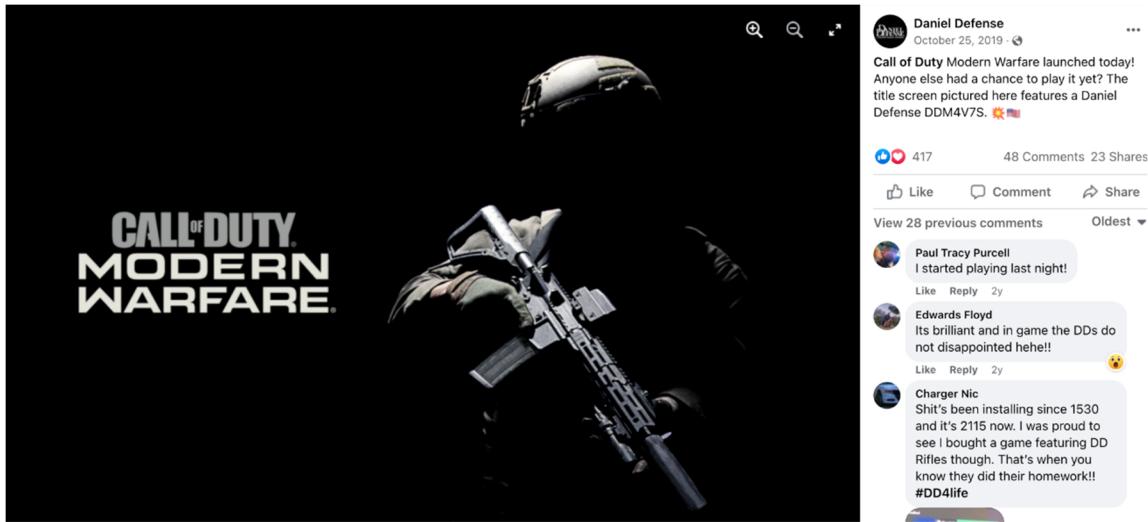
Some AR-15 manufacturers now often seek to spur sales by depicting men deploying their personal AR-15s and large capacity magazines in self-appointed armed offensive vigilante actions, such as this advertising image supplied by the AR-15 maker Patriot Ordnance Factory:<sup>37</sup>



<sup>35</sup> ProMag 50 round drum review from The Firearms Blog: <https://www.thefirearmblog.com/blog/2019/01/23/shot-2019-promag-glock-50-round-drum-mags/> (last viewed Feb. 24, 2023).

<sup>36</sup> Review of Springfield 35 round handgun magazines: <https://www.thearmorylife.com/review-xd-m-9mm-35-round-extended-magazine/> (last viewed March 15, 2023).

<sup>37</sup> <https://pof-usa.com/wallpapers/> (last visited Jan. 10, 2023).



Many firearms companies now seek out, and celebrate placement of firearms with large capacity magazines in popular video games that are commonly played by children. The following is a notable example of an AR-15 company celebrating the placement of their gun (with a large capacity magazine) into the Call of Duty Modern Warfare video game:<sup>38</sup>

Some prominent AR-15 companies design and market their rifle models with specific suggested uses that bear obvious similarities to mass shooting events that have happened in U.S. urban environments such as the Pulse Nightclub, Las Vegas Concert Shooting, and the El Paso Walmart shooting. These campaigns typically do not reference self-defense and instead rely upon marketing assault rifles and LCMs in offensive actions. This is one relevant example from AR-15 maker Wilson Combat:<sup>39</sup>



There are many AR-15 companies that combine the trends of continuous improvement, accessorization (including multiple LCMs), and modern digital marketing to encourage potential customers to optimize their rifles through an online ordering process. Below is one such example.<sup>40</sup> The official corporate name of this manufacturer further suggests the preferred use of their AR-15s is in offensive action from “rooftops,” which is precisely how the shooter during the July 4th Highland Park, Illinois, parade deployed his AR-15 rifle and LCMs.



In my experience, members of the firearms industry commonly discuss the *Heller* decision and openly support the right to self-*defense* as established in that decision. But guns and LCMs such as those listed in the preceding marketing campaigns are clearly and openly aimed at encouraging actions that are *offensive* in nature. Finally, because most industry members are aware of *Heller* and subsequent legal decisions, they are savvy to the impact they can have on the market

<sup>38</sup> Article on firearms marketing: <https://www.theatlantic.com/ideas/archive/2022/07/firearms-industry-marketing-mass-shooter/670621/> (last viewed Feb 1. 2023).

<sup>39</sup> <https://www.wilsoncombat.com/ar-calibers/224-valkyrie/super-sniper/> (last visited Jan. 10, 2023).

<sup>40</sup> <https://rooftoparms.com/> (last visited Jan. 10, 2023).

place. An illustrative example of this industry-wide effort to game the system can be found in the mission statement of Palmetto State Armory, which is one of the largest manufacturers and retailers in the United States. Palmetto publicly partners with most of the largest manufacturers and even hosts a large annual “gathering” which is supported and attended by leading industry companies.<sup>41</sup> Palmetto’s prominence is important because their well-known and openly-advertised mission, found in the image below, is not focused on self-defense or even profit, but rather specifically on quickly establishing that certain guns and LCMs are “common” as mentioned in the Heller decision. “Putting guns into ‘common use’ is an important legal defense established by the Supreme Court . . . we want to sell as many AR-15 and AK-47 rifles as we can and put them into common use in America today.”<sup>42</sup>

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**FREEDOM OVER PROFIT.**

Since its inception, Palmetto State Armory has focused on providing the best quality [AR-15 parts](#) and [accessories](#) for the best price possible. Following year after year of exponential growth, Palmetto State Armory's core principle remains the same, and our commitment to freedom before profit remains unwavering. The idea is simple:

**SELL AS MANY GUNS TO AS MANY LAW-ABIDING AMERICANS AS POSSIBLE.**

Putting guns into "common use" is an important legal defense established by the Supreme Court that safeguards the rights of the people against tyranny by prohibiting restrictions on firearms found to be "in common use". Putting any gun into "common use" protects against any attempt by the government to further infringe on the Second Amendment right of all Americans.

**OUR MISSION IS TO MAXIMIZE FREEDOM, NOT OUR PROFITS. WE WANT TO SELL AS MANY AR-15 AND AK-47 RIFLES AS WE CAN AND PUT THEM INTO COMMON USE IN AMERICA TODAY. OUR FOCUS ISN'T TO MAKE MASSIVE AMOUNTS OF MONEY BUT TO SPREAD FREEDOM AS FAR AND WIDE AS POSSIBLE. OUR LEGACY WILL NOT BE ABOUT MONEY; WE WANT OUR LEGACY TO BE ABOUT MAXIMIZING AMERICAN FREEDOM, AND WE WORK EVERY DAY TO DO JUST THAT. WE MAKE HIGH-QUALITY FIREARMS AT AFFORDABLE PRICES FOR EVERYONE! THEN WE BACK THEM WITH A FULL LIFETIME WARRANTY.**

<sup>41</sup> Website advertising Palmetto State Armory Industry “Gathering” <https://palmettostatearmory.com/thegathering.html> (last viewed March 21, 2023).

<sup>42</sup> Palmetto State Armory mission statement from website: <https://palmettostatearmory.com/about-psa.html> (last viewed March, 22, 2023).

One of Palmetto State Armory's Lead Star Arms Grunt AR15 pistols<sup>43</sup> was recently sold with a LCM and then subsequently used in the recent Nashville, Tennessee, school shooting. 124 rounds were fired from this weapon during the shooting in which 6 were killed, including three students. An LCM used in the rifle is clearly displayed in the evidence photo below.<sup>44</sup>



#### **D. Self-Defense and Magazine Capacity**

With regards to this case, some argue that Wash. Rev. Code § 9.41.370 effectively bans handguns, rifles, and shotguns used for self-defense. To be clear, however, Wash. Rev. Code § 9.41.370 does not make these firearms illegal but merely regulates the magazines that can be used with them. The same firearms remain legal and, used with magazines of up to 10-round capacities, provide Washington residents with more than ample means to defend themselves.

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<sup>43</sup> Palmetto State Armory Website Lead star arms website: <https://palmettostatearmory.com/brands/lead-star/complete-firearms/grunt-series.html> (last viewed April 7, 2023).

<sup>44</sup> Nashville shooter's firearms; <https://www.independent.co.uk/news/world/americas/crime/audrey-hale-nashville-school-shooting-guns-b2309177.html>.

As previously stated, despite the commercial marketing of LCMs in recent years, there is no firearm that requires an LCM to function as designed. By this I mean that all firearms that can accept an LCM can *also* accept a magazine that holds 10 or fewer rounds and still function precisely as intended. Such a firearm, if equipped with a magazine holding 10 or fewer rounds and if not prohibited by other laws, would be perfectly legal and would therefore afford Washington residents the means to defend themselves.

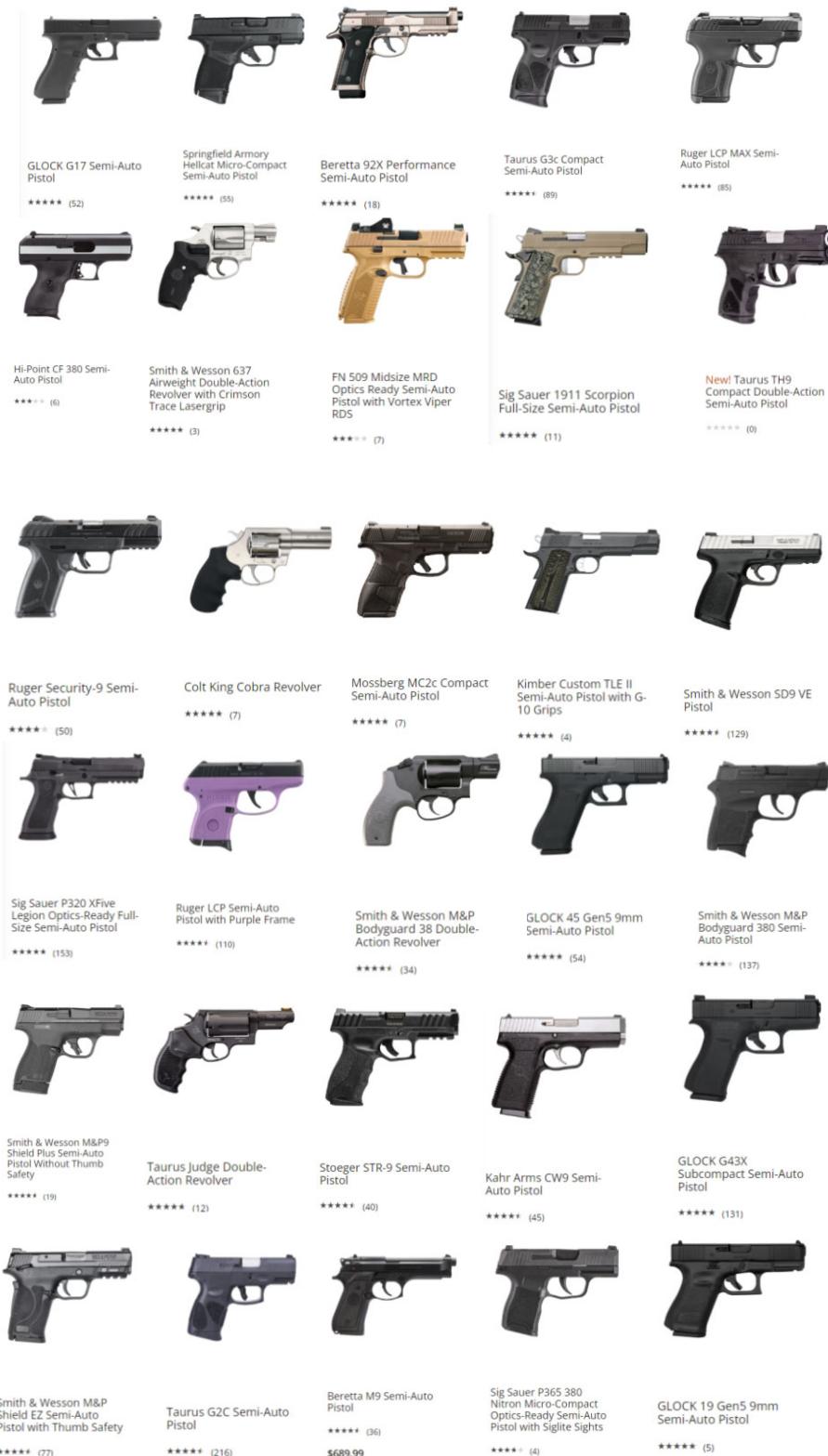
Even those handguns that are typically sold with an LCM (for example, a Glock 17 and all of the other LCM handguns pictured earlier in this report) can be used with a 10-round or standard-capacity magazine, and there is no difficulty in obtaining such a compliant magazine, as I explain in more detail below. Models with 10-round or even lower capacity magazines are offered by manufacturers. And even if the model itself is not sold with a 10-round or standard-capacity magazine off the shelf, manufacturers, retailers, and dozens of online sellers sell 10-round and standard-capacity magazines as an accessory. I am not aware of any semi-automatic firearm sold in the United States today for which there are no readily available magazines that hold 10 or fewer rounds.

Handguns are generally considered highly effective self-defense weapons and remain legal under Wash. Rev. Code § 9.41.370, which only regulates the magazines that can be used with firearms. In order to illustrate the breadth of these options, I offer a sample taken from Cabela's online firearms catalog below.<sup>45</sup> Cabela's is one of the nation's largest firearms retailers with stores across the country. The following list includes many of the most popular self-defense guns on the market today. The customer ratings are included to demonstrate that these are popular with consumers. Further, this list contains guns with a wide variation of characteristics, including different caliber sizes, domestic production versus foreign import, expense, design, men's and women's models, proven firearms with long histories, and new models just entering the market. (I included one gun that is so new it does not yet have any ratings.) Every one of these handguns is legal in Washington, and everyone has a standard capacity of 10 or fewer rounds or has 10-round

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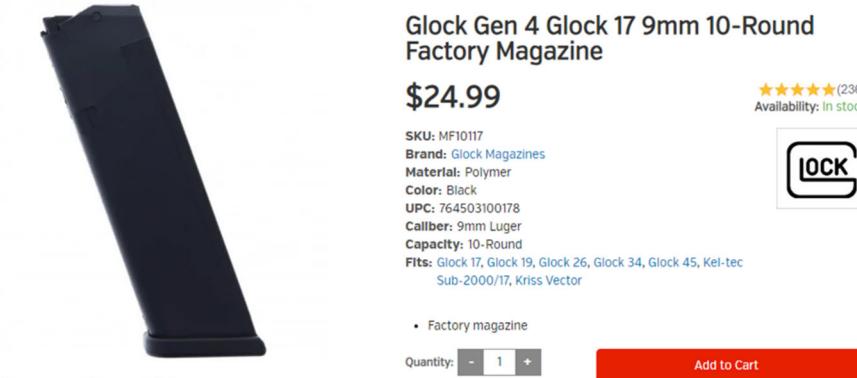
<sup>45</sup> Cabela's online handgun catalog: <https://www.cabelas.com/c/guns> (last viewed March 5, 2023).

magazines available. This is also true for hundreds more handguns from dozens of manufacturers not reflected in the list of legal pistols below.



It is also important to note that any gun with a 10-round capacity is a very effective self-defense weapon. In fact, there are many handgun models that utilize 10-round magazines and are openly praised by industry experts and journalists as excellent self-defense options. The following is a review for the Springfield Hellcat, which is one of the handguns pictured above and is one of the best-selling handguns in the country, offered by notable industry website TheArmoryLife.com: “10 rounds of 9mm in a micro-compact is still a formidable defense. Springfield Armory recently announced the addition of a 10-round version of the Hellcat pistol for shooters in states that require restricted magazine capacities. The new 10-round variant of the Hellcat offers a great self-defense option for owners that live in areas with these restrictions.”<sup>46</sup>

Glock too offers many handgun models that can be outfitted with a legal magazine. Even the Glock 17, which is typically sold with a 17-round magazine, can be outfitted with a 10-round magazine. In fact, there are many 10-round magazines available for Glock pistols. The following images are from one of dozens of websites that offer Glock 10-round magazines.<sup>47</sup>



There are also dozens of revolvers that are legal in Washington, many of which are pictured above. Revolvers, which almost always have 5 or 6-round cylinders which function as circular fixed-magazines, are considered to be highly reliable and extremely effective self-defense guns. During my years in the gun industry I regularly witnessed the most respected industry experts

<sup>46</sup> Review of Springfield Hellcat 10-round version: <https://www.thearmorylife.com/going-10-rounds-with-the-springfield-hellcat/> (last viewed Feb. 8, 2023).

<sup>47</sup> GunMag Warehouse listing for Glock 17 10-round magazines: [https://gunmagwarehouse.com/glock-gen-4-glock-17-9mm-10-round-factory-magazine.html?queryID=69682e2bd7a4c3fee9ba8c79c3bd20dd&objectID=635&indexName=magento\\_default\\_products](https://gunmagwarehouse.com/glock-gen-4-glock-17-9mm-10-round-factory-magazine.html?queryID=69682e2bd7a4c3fee9ba8c79c3bd20dd&objectID=635&indexName=magento_default_products) (last viewed March 5, 2023).

openly agreeing on this point. This widely held opinion is summed up in a 2022 Handguns Magazine article in which the author notes the reasons for a well-documented recent resurgence in revolver popularity for self-defense; “While a lot of the surge is due to folks purchasing small, super-light revolvers for concealed carry, sometimes overlooked is how good revolvers—particularly mid- to full-size ones—can be for home defense. Sure, they may not hold as many rounds as a 9mm semiautomatic, but they’re simple to use. There are no safeties to worry about, no slides to struggle with, no difficult magazines to load, no complicated manual of arms. With a revolver you just load the cylinder, close it and pull the trigger. That’s pretty much it. And if you’re new to guns and haven’t heard about the revolver’s reliability, well it’s legendary.”<sup>48</sup>

Many of those same experts also point out that the average self-defense situation involves very few shots fired. In fact, in my experience it is generally accepted within the industry that the average self-defense situation involves three or fewer shots. This is often discussed and reinforced in articles written by respected gun industry experts. For example, the following is an excerpt from a 2015 NRA American Rifleman article on the desirability of revolvers for self-defense: “The importance of this difference in ammunition capacity is debatable. Some self-defense gurus support the idea that more is better. Others point out that most civilian situations happen so quickly, with only a few rounds fired (an average of three), that handgun capacity is a moot point.”<sup>49</sup>

The commonality of 10-round magazines is illustrated by the marketing of the Beretta 92 (one variation is pictured above). The Beretta 92 has been the accepted self-defense pistol of the U.S. military for decades and is one of the most popular pistols in the United States. (This pistol’s military designation is the M9 and its civilian model is 92FS.) Beretta sells three versions of this pistol commercially; one is sold with a 15-round magazine and two are sold with 10-round magazines. The two 10-round options comply with common magazine-capacity regulations in states such as Washington. Nowhere does Beretta, or any other reputable authority, claim that the

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<sup>48</sup> Handguns Magazine Revolver Article: <https://www.handgunsmag.com/editorial/best-revolvers-defense/386911> (last viewed March 12, 2023).

<sup>49</sup> NRA American Rifleman article on revolvers: <https://www.americanrifleman.org/content/why-choose-a-wheelgun/> (last viewed Feb. 1, 2023).

10-round options are unreliable or defective in any way. Neither is there any issue with increased price or less availability. The following is the Beretta website page advertising the three models of this pistol. The only difference in the models is the magazine offered. Switching this accessory between pistols is an easy and common change. Even the pistol image is the same for all three.<sup>50</sup>



**Beretta 92FS**

US Military contract—check. Renewed US Military contract after demanding campaigns in the world's toughest environments—check. Find out what makes t... [Read More](#)

[BUY NOW](#)

[f](#) [t](#) [g](#)

Model Code	J92F300CA	JS92F300	JS92F300M
Model Name	92FS	92FS	92FS
MSRP	\$709.00	\$709.00	\$709.00
Action	Dbl/Sngl	Dbl/Sngl	Dbl/Sngl
Caliber	9 mm	9 mm	9 mm
Rounds	10 Rounds	10 Rounds	15 Rounds

Another illustrative example is FN's 5-SeveN pistol, which is marketed to "commercial, law enforcement and military" customers. According to the FN website, this pistol is offered with either 10- or 20-round magazines. From outward appearances there is no difference in either, and FN makes no claim regarding the 10-round option being more difficult to obtain, more expensive, or less reliable. In fact, FN markets both the 10 and 20-round versions as "the ultimate precision pistol."<sup>51</sup>



[Pistols > FN Five-seveN® Series > FN Five-seveN® MRD FDE](#)

**FN Five-seveN® MRD FDE**

Available for commercial, law enforcement, and military.

MSRP: \$1,509.00

[Buy Now ▾](#)

**SPECs**

**CALIBER:** 5.7x28mm  
**OPERATION:** Delayed blowback, Single-action only  
**MAG CAPACITY:** 10 or 20 Rd.  
**WEIGHT:** 25.2 oz. (without mag)  
**BARREL LENGTH:** 4.8"  
**OVERALL LENGTH:** 8.2"  
**TWIST RATE:** 1:9" RH  
**HEIGHT:** 5.6"  
**WIDTH:** 1.35"  
**TRIGGER PULL:** 4.4 - 7.87 lb.  
**SIGHT RADIUS:** 7.0"

**PRIMARY FEATURES**

Slide cut to mount most optics  
Minimal recoil from the FN 5.7x28mm cartridge  
Enhanced grip with stippled texture  
Adjustable iron sights co-witness with most MRDs

**SLIDE**

Add most MRDs in minutes, without a gunsmith  
Machined steel slide with polymer cover  
Enhanced slide cover improves cocking control  
Photo-luminescent front sight with adjustable rear

<sup>50</sup> Beretta Website 92FS pistol: <https://www.beretta.com/en-us/beretta-92fs/> (last viewed February 24, 2023).

<sup>51</sup> FN Five-seveN MRD FDE website: <https://fnamerica.com/products/pistols/fn-five-seven-mrd-fde/> (last viewed March 11, 2023).

Shotguns are also excellent self-defense guns, with some holding only 2 rounds and most no more than 5-6 rounds. Some of the best options are pump-action and almost all are legal in Washington. In fact, there are dozens of published articles that claim pump-action shotguns are the best self-defense firearm available. One such opinion can be found in a 2020 *Outdoor Life* article, the subtitle of which describes an important shotgun advantage; “Shotguns are more accurate than handguns and ARs when an intruder enters your home.” The article goes on to label the pump shotgun as the “ultimate” and “probably the best” choice: “The 12-gauge pump shotgun is touted as the ultimate home defender. It’s far from a one-trick-pony and about as general-purpose of a firearm as you can buy” and “Once properly set up, the 12-gauge shotgun is probably the best all-around choice for the average homeowner seeking a defensive firearm.”<sup>52</sup>

There are many reasons why shotguns are considered superior defense guns. Among these are that they are easy to operate and are very forgiving with regards to accuracy because they spray a wide “pattern” of projectiles as opposed to a rifle such as an AR-15 that fires singular bullets. The bullets from these rifles are far more deadly in targeted offensive operations and at longer ranges (from 50 to 250 yards) but shotguns are designed for defensive situations which almost always happen at short ranges below 50 yards. These are the same situations where surprise commonly leads to stress-induced inaccurate shooting, which is why the wider pattern of a shotgun is generally touted as superior.

Many of the best self-defense shotguns are designed with capacities of 5 or 6 rounds, the most famous of which is the Remington 870. In my more than 25 years in the industry, I never met anyone who disputed that the 870 pump shotgun was among the most popular and effective home defense guns of all time. In fact, many industry executives, most of whom did not work at Remington, often told me that the 870 was their personal preferred self-defense firearm.

This review of self-defense guns from the highly respected and notable industry publication *Gun Digest* confirms this widely held consensus in an article about the Remington 870 Home

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<sup>52</sup> Why a Shotgun is the Best option for Home Defense: <https://www.outdoorlife.com/story/guns/why-a-shotgun-is-the-best-option-for-home-defense/> (last viewed March 12, 2023).

Defense model: “As plain and simple as it gets when it comes to Remington 870 tactical shotguns, the Home Defense is a knock-out bargain. There are cheaper 870s available, but none set up to excel like this one. In particular, its 6-round tubular magazine—two more than standard 870 models—gives you more than enough firepower to handle anything outside a Hunnish siege.”<sup>53</sup>

Below is a photograph from that article of the gun described. The gun, which according to the article “excels” at self-defense, has only a 6-round capacity and cannot accept detachable LCMs.

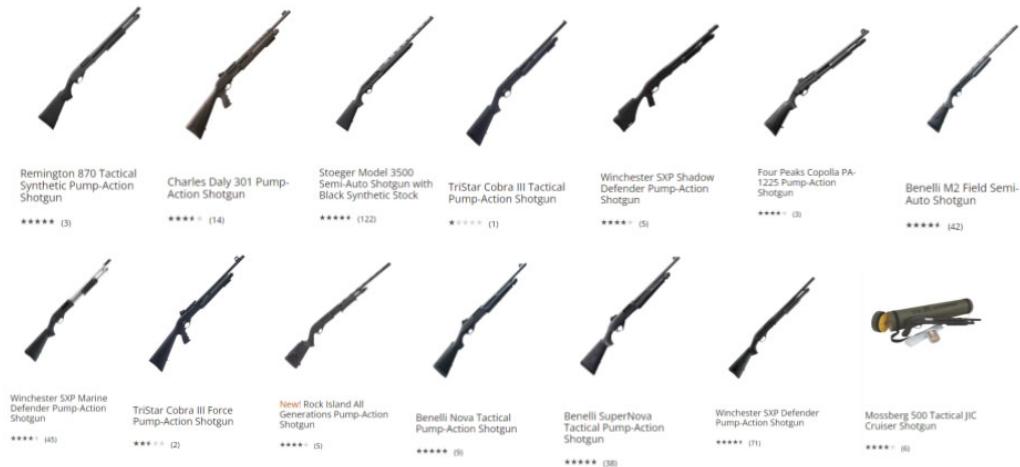
870 Home Defense



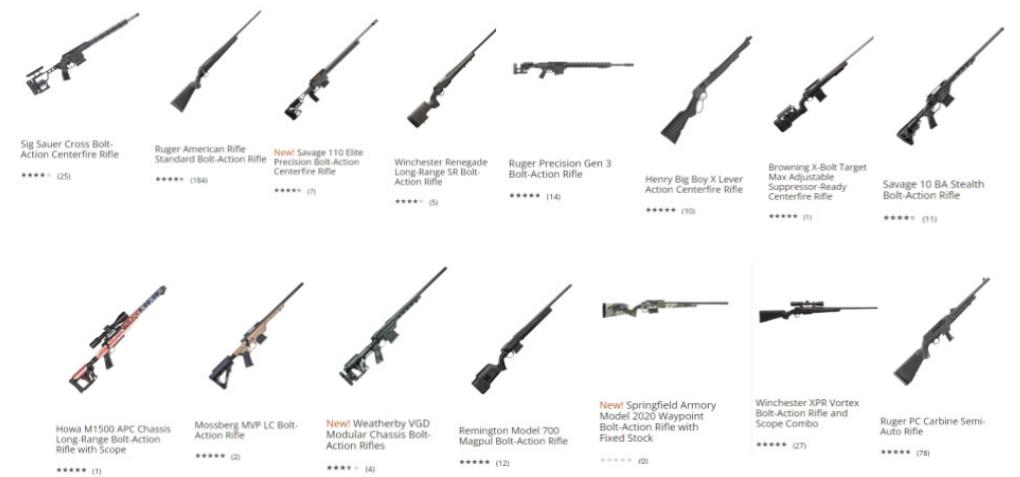
In addition to this Remington model, there are dozens of other highly effective self-defense shotguns, all of which remain legal in Washington. The following model list, also taken from Cabela’s website, is an illustration of just a small fraction of those models. Many shotguns are designed for hunting. Those hunting shotguns are also effective self-defense guns, but here I focus on a sampling of shotguns that are specifically designed for self-defense and are legal in Washington.

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<sup>53</sup> Gun Digest review of shotguns for self-defense: <https://gundigest.com/gun-reviews/shotguns/top-four-remington-870-tactical-shotgun-options> (last viewed March 11, 2023).



As with the handguns and shotguns discussed above, rifles do not require large-capacity magazines and thus remain legal in Washington. Like shotguns, there are hundreds of hunting rifles that are also effective self-defense guns. But there are also many rifles that are specifically designed for self-defense. The following listing, again from the Cabela's website, contains just a small sample of rifles that are designed for self-defense and can be used with magazines that hold 10 or fewer rounds.



As with handguns and shotguns, there is wide variation of rifles, giving customers many different options in terms of size, caliber size, expense, weight, and length. Most of the examples above are bolt-action rifles, but semi-automatic rifles, such as the Ruger PC Carbine, can be equipped with a 10-round magazine (pictured above).

## V. CONCLUSION

This report aims to correct myths and misunderstandings about the origins and use of LCMs and many of the guns that utilize them. LCMs were designed for offensive military or “assault” actions which is why they are most often selected by mass shooters. Until very recently, the firearms industry itself agreed that LCMs were designed for offensive military or “assault” actions and therefore sought to apply voluntary and restrictive rules and norms to the sales and marketing of such items. It should also be clear that all magazines are accessories. Yes, a magazine of some kind is necessary for any semi-automatic firearm, but an LCM is not. A semi-automatic firearm will function with a large or small magazine and an LCM is not necessary for self-defense. It is also clear that by the industry’s own admission, 10-round (or smaller) magazines are ubiquitous and do not hinder normal function of any semi-automatic firearm. Lastly, despite claims to the contrary, every firearm that was legal before Wash. Rev. Code § 9.41.370 remains legal after it. These same firearms are touted by the firearms industry itself as “effective” or “excellent” or even “the best” self-defense options.

# Exhibit A

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## SPEAKER • FIREARMS INDUSTRY EXPERT • AUTHOR

### FIREARMS INDUSTRY AND GUN POLICY EXPERIENCE

#### GUN INDUSTRY CAREER

- **25-year sales and marketing executive** leader with extensive industry connections and knowledge
- Pioneered industry-changing dealer direct sales method
- Responsible for worldwide sales efforts
- Built one of the firearms industry's **most respected worldwide sales** teams from ground up.
- Developed and managed multi-million-dollar budgets
- Deep and thorough understanding of all **competitive industry sales channels, marketing programs, and distribution methods**
- **Recognized multiple times by industry peers** as one of three finalists for Industry Person of the Year (highest personal award in the shooting industry)
- **Expert on gun industry sales and marketing histories** and current firearms industry trajectory

#### WRITING AND SPEAKING

- Wrote critically acclaimed first-ever firearms industry personal memoir: [Gunfight – My Battle Against The Industry That Radicalized America \(2021\)](#)
- Regular contributor to [The Atlantic](#), [The Bulwark](#), [The Guardian](#), and others
- Guest on more than 60 national podcasts
- Regular guest policy expert on [CNN](#), [MSNBC](#), [PBS](#), [NPR](#), [ABC](#), [CBS](#), and many others
- Keynote speaker

#### POLICY ADVISOR

- Senior Policy Advisor to [Giffords](#) (2020-current)
- Briefed [United States Senate](#) Democratic Caucus (2022)
- Advisor to [Biden for President](#) campaign – Hunting and Outdoor issues (2020)
- Testified before [Joint Economic Committee](#) (2022)
- Testified before [House Oversight and Reform Committee](#) (2022)

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### **Kimber July 1995-Sept 2020, Kalispell, Montana & Yonkers, New York**

**kimberamerica.com**

VICE PRESIDENT, SALES

EMPLOYEES: 560

**Overall worldwide sales authority, providing strategic leadership and direction of the most successful and pioneering dealer-direct sales model in the outdoor sporting goods industry. Lead projects, people and processes that build brand, drive innovation and retain competitive positioning.**

- Created a highly successful, stand-alone sales operation and direct sales model producing exceptional employee work satisfaction, high efficiency and repeatable YOY sales results
- Produced consistent revenue growth by as much as 23% YOY
- Optimized operations and strategically cut costs during economic downturn, holding gross margins without increasing sales expense

## EDUCATION

### **Bachelor of Science, History and Political Science, 1992**

**Bethany College / Lindsborg, KS**

### **Professional Marketing and Sales Management Certification, 2006**

**Rutgers University – School of Business / Camden, NJ**